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6 Attorneys for Defendant
7 Millennium Products, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JONATHAN RETTA, KIRSTEN
12 SCHOFIELD, and JESSICA
MANIRE, on Behalf of Themselves
13 and All Others Similarly Situated,

14 Plaintiffs,

15 v.

16 MILLENNIUM PRODUCTS, Inc.,
17 Defendant.

Case No. 2:15-CV-01801-PSG-AJW

**DEFENDANT MILLENNIUM
PRODUCTS, INC.'S ANSWER TO
THIRD AMENDED CLASS ACTION
COMPLAINT**

Judge: Hon. Philip S. Gutierrez

TAC Filed: October 8, 2015
Trial Date: Not Set

JURY TRIAL DEMANDED

1 Defendant Millennium Products, Inc. (“MILLENNIUM”) hereby answers the
2 putative Third Amended Class Action Complaint (“Complaint”) filed by Plaintiffs
3 Jonathan Retta, Kirsten Schofield, and Jessica Manire (“Plaintiffs”) as follows.
4 This answer is based on MILLENNIUM’s knowledge as to its own conduct and
5 information and belief as to all other matters described herein.

6 In response to the unnumbered introductory paragraph, MILLENNIUM
7 specifically denies that the requisites for class action treatment are present, that this
8 action could properly proceed as a class action, or that Plaintiffs or the putative
9 class are entitled to any relief whatsoever. MILLENNIUM lacks knowledge or
10 information sufficient to admit or deny the remainder of the unnumbered
11 introductory paragraph, and on that basis, denies each and every allegation therein.

12 **INTRODUCTION**

13 1. MILLENNIUM admits that, in 2010, MILLENNIUM decided to
14 market and distribute an alcoholic version of its kombucha products and a non-
15 alcoholic version of its kombucha products. MILLENNIUM denies the remainder
16 of Paragraph 1.

17 2. MILLENNIUM avers that Paragraph 2 consists of legal arguments and
18 conclusions to which no response is required. To the extent any response to
19 Paragraph 2 is necessary, MILLENNIUM denies each and every allegation of
20 Paragraph 2. MILLENNIUM specifically denies that “every flavor of
21 Millennium’s GT’s Enlightened Kombucha and Enlightened Synergy lines” is at
22 issue in this action, that any products other than the specific products actually
23 purchased by Plaintiffs are at issue in this action, and that Plaintiffs may pursue
24 claims as to any products other than other than such specific products.

25 3. MILLENNIUM denies that labeling and advertising of any
26 MILLENNIUM product is or has ever been misleading. MILLENNIUM lacks
27 knowledge or information sufficient to admit or deny the remainder of Paragraph 3,
28 and on that basis, denies the remainder of Paragraph 3.

1 4. MILLENNIUM avers that Paragraph 4 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response to
3 Paragraph 4 is necessary, MILLENNIUM denies each and every allegation of
4 Paragraph 4. MILLENNIUM specifically denies that the requisites for class action
5 treatment are present, that this action could properly proceed as a class action, or
6 that Plaintiffs or the putative class are entitled to any relief whatsoever.

7 **PARTIES**

8 5. MILLENNIUM denies that labeling and advertising of any
9 MILLENNIUM product, or that any of MILLENNIUM's conduct, is or has ever
10 been deceptive, misleading, unfair and/or fraudulent or has injured Plaintiffs in any
11 way. MILLENNIUM further denies that (1) any statements made on
12 MILLENNIUM products were "unauthorized" or "mischaracterized the level,
13 amount, and nature of antioxidants in the bottles"; (2) Plaintiffs paid a "price
14 premium" for any MILLENNIUM products; and (3) any of MILLENNIUM's
15 Enlightened products are or have ever been alcoholic beverages or required to bear
16 alcohol warnings. To the extent Paragraph 5 purports to quote excerpts from
17 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
18 refers to those materials as the best evidence of their own contents.
19 MILLENNIUM avers that the remainder of Paragraph 5 consists of legal arguments
20 and conclusions to which no response is required. To the extent any response to the
21 remainder of Paragraph 5 is necessary, MILLENNIUM lacks knowledge or
22 information sufficient to admit or deny the remainder of Paragraph 5, and on that
23 basis, denies the remainder of Paragraph 5.

24 6. MILLENNIUM denies that labeling and advertising of any
25 MILLENNIUM product, or that any of MILLENNIUM's conduct, is or has ever
26 been deceptive, misleading, unfair and/or fraudulent or has injured Plaintiffs in any
27 way. MILLENNIUM further denies that (1) any statements made on
28 MILLENNIUM products were "unauthorized" or "mischaracterized the level,

1 amount, and nature of antioxidants in the bottles”; (2) Plaintiffs paid a “price
2 premium” for any MILLENNIUM products; and (3) any of MILLENNIUM’s
3 Enlightened products are or have ever been alcoholic beverages or required to bear
4 alcohol warnings. To the extent Paragraph 6 purports to quote excerpts from
5 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
6 refers to those materials as the best evidence of their own contents.
7 MILLENNIUM avers that the remainder of Paragraph 6 consists of legal arguments
8 and conclusions to which no response is required. To the extent any response to the
9 remainder of Paragraph 6 is necessary, MILLENNIUM lacks knowledge or
10 information sufficient to admit or deny the remainder of Paragraph 6, and on that
11 basis, denies the remainder of Paragraph 6.

12 7. MILLENNIUM denies that labeling and advertising of any
13 MILLENNIUM product, or that any of MILLENNIUM’s conduct, is or has ever
14 been deceptive, misleading, unfair and/or fraudulent or has injured Plaintiffs in any
15 way. MILLENNIUM further denies that (1) any statements made on
16 MILLENNIUM products were “unauthorized” or “mischaracterized the level,
17 amount, and nature of antioxidants in the bottles”; (2) Plaintiffs paid a “price
18 premium” for any MILLENNIUM products; and (3) any of MILLENNIUM’s
19 Enlightened products are or have ever been alcoholic beverages or required to bear
20 alcohol warnings. To the extent Paragraph 7 purports to quote excerpts from
21 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
22 refers to those materials as the best evidence of their own contents.
23 MILLENNIUM avers that the remainder of Paragraph 7 consists of legal arguments
24 and conclusions to which no response is required. To the extent any response to the
25 remainder of Paragraph 6 is necessary, MILLENNIUM lacks knowledge or
26 information sufficient to admit or deny the remainder of Paragraph 7, and on that
27 basis, denies the remainder of Paragraph 7.
28

1 8. MILLENNIUM admits that Millennium Products, Inc. is a California
2 corporation located at 4646 Hampton St., Vernon, California 90058, that
3 MILLENNIUM manufactures, advertises, sells, distributes, and markets
4 Enlightened kombucha nationwide, and MILLENNIUM's website instructs that
5 customer correspondence be directed to a California address. MILLENNIUM
6 denies that the marketing, advertising, or product information of any
7 MILLENNIUM product is or has ever been misleading. MILLENNIUM avers that
8 the remainder of Paragraph 8 consists of legal arguments and conclusions to which
9 no response is required. To the extent any response to the remainder of Paragraph 8
10 is necessary, MILLENNIUM denies the remainder of Paragraph 8.

11 **JURISDICTION AND VENUE**

12 9. MILLENNIUM avers that Paragraph 9 consists of legal arguments and
13 conclusions to which no response is required. To the extent any response to
14 Paragraph 9 is necessary, MILLENNIUM admits that this Court has jurisdiction
15 over this action pursuant to 28 U.S.C. § 1332(d). MILLENNIUM further admits
16 that Plaintiff has proposed that this action be treated as a class action in which some
17 members of the putative class are citizens of states different from MILLENNIUM,
18 and that, on the facts alleged in the Complaint, the aggregate amount in controversy
19 exceeds \$5,000,000. MILLENNIUM further admits that MILLENNIUM has sold
20 hundreds of thousands of bottles of Enlightened Kombucha. MILLENNIUM
21 specifically denies that the requisites for class action treatment are present, that this
22 action could properly proceed as a class action, or that Plaintiff or the putative class
23 are entitled to any relief whatsoever. MILLENNIUM lacks knowledge or
24 information sufficient to admit or deny the remainder of Paragraph 9, and on that
25 basis, denies the remainder of Paragraph 9.

26 10. MILLENNIUM admits that MILLENNIUM is headquartered in
27 California. MILLENNIUM avers that the remainder of Paragraph 10 consists of
28 legal arguments and conclusions to which no response is required. To the extent

1 any response to the remainder of Paragraph 10 is necessary, MILLENNIUM lacks
2 knowledge or information sufficient to admit or deny the remainder of Paragraph
3 10, and on that basis, denies the remainder of Paragraph 10.

4 11. MILLENNIUM admits that MILLENNIUM is headquartered in
5 California. MILLENNIUM denies that the marketing, advertising, or product
6 information of any MILLENNIUM product is or has ever been misleading or
7 misbranded. MILLENNIUM avers that the remainder of Paragraph 11 consists of
8 legal arguments and conclusions to which no response is required. To the extent
9 any response to the remainder of Paragraph 11 is necessary, MILLENNIUM lacks
10 knowledge or information sufficient to admit or deny the remainder of Paragraph
11 11, and on that basis, denies the remainder of Paragraph 11.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 12. MILLENNIUM admits that the name “kombucha” comes from the
14 common name of a fermented tea drink, and that kombucha is made from a tea that
15 ferments with the aid of a bacteria known as “scooby,” which can float at top of the
16 fermenting tea. To the extent Paragraph 12 purports to quote excerpts from
17 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
18 refers to those materials as the best evidence of their own contents.
19 MILLENNIUM avers that the remainder of Paragraph 12 is too vague to require a
20 response, mischaracterizes the facts, and consists of legal arguments and
21 conclusions to which no response is required. To the extent any response to the
22 remainder of Paragraph 12 is required, MILLENNIUM denies the remainder of
23 Paragraph 12.

24 13. MILLENNIUM admits, in 2010, some major retailers stopped selling
25 GT’s Kombucha Beverages as a result of the potential that some kombucha
26 products may contain greater than 0.5% alcohol by volume. MILLENNIUM
27 further admits that, in 2010, Millennium released a line of “Enlightened” kombucha
28 products, which was formulated to ensure that the products did not exceed 0.5%

1 alcohol by volume, and a “Classic” line of kombucha products inspired by
2 Millennium’s original product formulas. To the extent Paragraph 13 purports to
3 quote excerpts from MILLENNIUM’s packaging, advertising, or marketing
4 materials, MILLENNIUM refers to those materials as the best evidence of their
5 own contents. MILLENNIUM avers that the remainder of Paragraph 13 is too
6 vague to require a response, mischaracterizes the facts, and consists of legal
7 arguments and conclusions to which no response is required. To the extent any
8 response to the remainder of Paragraph 13 is required, MILLENNIUM denies the
9 remainder of Paragraph 13.

10 14. To the extent Paragraph 14 purports to quote excerpts from
11 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
12 refers to those materials as the best evidence of their own contents.
13 MILLENNIUM avers that the remainder of Paragraph 14 does not consist of any
14 allegations to which a response is required.

15 15. MILLENNIUM denies each and every allegation in Paragraph 15.

16 16. To the extent Paragraph 16 purports to quote excerpts from
17 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
18 refers to those materials as the best evidence of their own contents. To the extent
19 any response to the remainder of Paragraph 16 is necessary, MILLENNIUM lacks
20 knowledge or information sufficient to admit or deny the remainder of Paragraph
21 16, and on that basis, denies the remainder of Paragraph 16.

22 17. To the extent Paragraph 17 purports to quote excerpts from
23 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM
24 refers to those materials as the best evidence of their own contents. To the extent
25 any response to the remainder of Paragraph 17 is necessary, MILLENNIUM lacks
26 knowledge or information sufficient to admit or deny the remainder of Paragraph
27 16, and on that basis, denies the remainder of Paragraph 17.

28

1 18. To the extent Paragraph 18 purports to quote excerpts from
2 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
3 refers to those materials as the best evidence of their own contents.
4 MILLENNIUM denies that any of MILLENNIUM's Enlightened products are or
5 have ever been alcoholic beverages or required to bear alcohol warnings. To the
6 extent any response to the remainder of Paragraph 18 is necessary, MILLENNIUM
7 lacks knowledge or information sufficient to admit or deny the remainder of
8 Paragraph 18, and on that basis, denies the remainder of Paragraph 18.

9 19. To the extent Paragraph 19 purports to quote excerpts from
10 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
11 refers to those materials as the best evidence of their own contents. To the extent
12 any response to the remainder of Paragraph 19 is necessary, MILLENNIUM lacks
13 knowledge or information sufficient to admit or deny the remainder of Paragraph
14 16, and on that basis, denies the remainder of Paragraph 19.

15 20. MILLENNIUM avers that Paragraph 20 is too vague to require a
16 response, as it does not specify which kombucha products are the subject of
17 Paragraph 20, and on that basis, denies each and every allegation of Paragraph 20.

18 21. MILLENNIUM admits that both the "Classic" and "Enlightened"
19 versions of MILLENNIUM's kombucha beverages are unpasteurized.
20 MILLENNIUM avers that the remainder of Paragraph 21 is too vague to require a
21 response, mischaracterizes the facts, and consists of legal arguments and
22 conclusions to which no response is required. To the extent any response to the
23 remainder of Paragraph 21 is required, MILLENNIUM denies the remainder of
24 Paragraph 21.

25 22. MILLENNIUM denies each and every allegation in Paragraph 22.

26 23. To the extent Paragraph 23 purports to quote statements and/or
27 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM
28 refers to those statements and/or materials as the best evidence of their own

1 contents. To the extent any response to the remainder of Paragraph 23 is necessary,
2 MILLENNIUM lacks knowledge or information sufficient to admit or deny the
3 remainder of Paragraph 23, and on that basis, denies the remainder of Paragraph 23.

4 24. To the extent Paragraph 24 purports to quote statements and/or
5 materials from the Maine Department of Agriculture, MILLENNIUM refers to
6 those statements and/or materials as the best evidence of their own contents.
7 MILLENNIUM admits that, in 2010, some retailers pulled kombucha products,
8 including GT's Kombucha products, off the shelves, as a result of the potential that
9 some kombucha products may contain greater than 0.5% alcohol by volume.
10 MILLENNIUM avers that the remainder of Paragraph 24 is too vague to require a
11 response, mischaracterizes the facts, and consists of legal arguments and
12 conclusions to which no response is required. To the extent any response to the
13 remainder of Paragraph 24 is necessary, MILLENNIUM denies the remainder of
14 Paragraph 24.

15 25. To the extent Paragraph 25 purports to quote statements and/or
16 materials from Honest Tea, MILLENNIUM refers to those statements and/or
17 materials as the best evidence of their own contents. To the extent any response to
18 the remainder of Paragraph 25 is necessary, MILLENNIUM lacks knowledge or
19 information sufficient to admit or deny the remainder of Paragraph 25, and on that
20 basis, denies the remainder of Paragraph 25.

21 26. To the extent Paragraph 26 purports to quote statements and/or
22 materials from GT Dave, MILLENNIUM refers to those statements and/or
23 materials as the best evidence of their own contents. MILLENNIUM admits that
24 products within the "Enlightened" line of GT's Kombucha contain raw and
25 unpasteurized kombucha. MILLENNIUM avers that the remainder of Paragraph 26
26 is too vague to require a response, mischaracterizes the facts, and consists of legal
27 arguments and conclusions to which no response is required. To the extent any
28

1 response to the remainder of Paragraph 26 is necessary, MILLENNIUM denies the
2 remainder of Paragraph 26.

3 27. MILLENNIUM lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 27, and on that basis, denies each and every
5 allegation of Paragraph 27.

6 28. MILLENNIUM lacks knowledge or information sufficient to admit or
7 deny the allegations of Paragraph 28, and on that basis, denies each and every
8 allegation of Paragraph 28.

9 29. MILLENNIUM lacks knowledge or information sufficient to admit or
10 deny the allegations of Paragraph 29, and on that basis, denies each and every
11 allegation of Paragraph 29.

12 30. MILLENNIUM lacks knowledge or information sufficient to admit or
13 deny the allegations of Paragraph 30, and on that basis, denies each and every
14 allegation of Paragraph 30.

15 31. MILLENNIUM lacks knowledge or information sufficient to admit or
16 deny the allegations of Paragraph 31, and on that basis, denies each and every
17 allegation of Paragraph 31.

18 32. MILLENNIUM lacks knowledge or information sufficient to admit or
19 deny the allegations of Paragraph 32, and on that basis, denies each and every
20 allegation of Paragraph 32.

21 33. MILLENNIUM lacks knowledge or information sufficient to admit or
22 deny the allegations of Paragraph 33, and on that basis, denies each and every
23 allegation of Paragraph 33.

24 34. To the extent Paragraph 34 purports to quote statements and/or
25 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM
26 refers to those statements and/or materials as the best evidence of their own
27 contents. To the extent any response to the remainder of Paragraph 34 is necessary,
28

1 MILLENNIUM lacks knowledge or information sufficient to admit or deny the
2 remainder of Paragraph 34, and on that basis, denies the remainder of Paragraph 34.

3 35. To the extent Paragraph 35 purports to quote statements and/or
4 materials from the Alcohol and Tobacco Tax and Trade Bureau and/or state or
5 federal laws and/or regulations, MILLENNIUM refers to those statements and/or
6 materials as the best evidence of their own contents. To the extent any response to
7 the remainder of Paragraph 35 is necessary, MILLENNIUM lacks knowledge or
8 information sufficient to admit or deny the remainder of Paragraph 35, and on that
9 basis, denies the remainder of Paragraph 35.

10 36. To the extent Paragraph 36 purports to quote statements and/or
11 materials from state or federal laws and/or regulations, MILLENNIUM refers to
12 those statements and/or materials as the best evidence of their own contents. To the
13 extent any response to the remainder of Paragraph 36 is necessary, MILLENNIUM
14 lacks knowledge or information sufficient to admit or deny the remainder of
15 Paragraph 36, and on that basis, denies the remainder of Paragraph 36.

16 37. To the extent Paragraph 37 purports to quote statements and/or
17 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM
18 refers to those statements and/or materials as the best evidence of their own
19 contents. To the extent any response to the remainder of Paragraph 37 is necessary,
20 MILLENNIUM lacks knowledge or information sufficient to admit or deny the
21 remainder of Paragraph 37, and on that basis, denies the remainder of Paragraph 37.

22 38. To the extent Paragraph 38 purports to quote statements and/or
23 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM
24 refers to those statements and/or materials as the best evidence of their own
25 contents. To the extent any response to the remainder of Paragraph 38 is necessary,
26 MILLENNIUM lacks knowledge or information sufficient to admit or deny the
27 remainder of Paragraph 38, and on that basis, denies the remainder of Paragraph 38.
28

1 39. MILLENNIUM denies that any MILLENNIUM product is or has ever
2 been “misbranded under the FDA’s labeling requirements, California’s Sherman
3 Food Drug & Cosmetic Law and New York’s Agriculture and Marketing Law.”
4 discussed in greater detail below. To the extent Paragraph 39 purports to quote
5 statements and/or materials from state or federal laws and/or regulations,
6 MILLENNIUM refers to those statements and/or materials as the best evidence of
7 their own contents. MILLENNIUM avers that the remainder of Paragraph 39
8 consists of legal arguments and conclusions to which no response is required. To
9 the extent any response to the remainder of Paragraph 39 is necessary,
10 MILLENNIUM denies the remainder of Paragraph 39.

11 40. MILLENNIUM denies that any of MILLENNIUM’s Enlightened
12 products contain or have ever contained “substantial amounts of alcohol.”
13 MILLENNIUM further denies that any MILLENNIUM product is or has ever
14 violated any state consumer health and safety regulations. To the extent Paragraph
15 40 purports to quote statements and/or materials from state or federal laws and/or
16 regulations, MILLENNIUM refers to those statements and/or materials as the best
17 evidence of their own contents. MILLENNIUM avers that the remainder of
18 Paragraph 40 consists of legal arguments and conclusions to which no response is
19 required. To the extent any response to the remainder of Paragraph 40 is necessary,
20 MILLENNIUM denies the remainder of Paragraph 40.

21 41. MILLENNIUM denies that any of MILLENNIUM’s Enlightened
22 products are or have ever been “significantly above the 0.5 threshold at the time of
23 sale and consumption” or “almost as alcoholic as traditional beer.” MILLENNIUM
24 further denies that any MILLENNIUM has ever “distribute[d] Enlightened
25 Kombucha in violation of Federal and State laws.” MILLENNIUM lacks
26 knowledge or information sufficient to admit or deny the allegation that “Plaintiffs
27 do not know whether Enlightened Kombucha is below 0.5 alcohol by volume at the
28 moment it leaves Millennium’s distribution center,” and on that basis, deny this

1 allegation. MILLENNIUM avers that the remainder of Paragraph 41 consists of
2 legal arguments and conclusions to which no response is required. To the extent
3 any response to the remainder of Paragraph 41 is necessary, MILLENNIUM denies
4 the remainder of Paragraph 41.

5 42. To the extent Paragraph 42 purports to quote statements and/or
6 materials from GT Dave, MILLENNIUM refers to those statements and/or
7 materials as the best evidence of their own contents. MILLENNIUM avers that the
8 remainder of Paragraph 42 consists of legal arguments and conclusions to which no
9 response is required. To the extent any response to the remainder of Paragraph 42
10 is necessary, MILLENNIUM denies the remainder of Paragraph 42.

11 43. To the extent Paragraph 43 purports to quote excerpts from
12 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
13 refers to those materials as the best evidence of their own contents.
14 MILLENNIUM avers that the remainder of Paragraph 43 consists of legal
15 arguments and conclusions to which no response is required. To the extent any
16 response to the remainder of Paragraph 43 is necessary, MILLENNIUM denies the
17 remainder of Paragraph 43.

18 44. To the extent Paragraph 44 purports to quote excerpts from
19 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
20 refers to those materials as the best evidence of their own contents.
21 MILLENNIUM avers that the remainder of Paragraph 44 consists of legal
22 arguments and conclusions to which no response is required. To the extent any
23 response to the remainder of Paragraph 44 is necessary, MILLENNIUM denies the
24 remainder of Paragraph 44.

25 45. MILLENNIUM avers that Paragraph 45 consists of legal arguments
26 and conclusions to which no response is required. To the extent any response to
27 Paragraph 45 is necessary, MILLENNIUM denies each and every allegation of
28 Paragraph 45.

1 46. MILLENNIUM admits that kombucha is a type of tea. To the extent
2 Paragraph 46 purports to quote excerpts from MILLENNIUM's packaging,
3 advertising, or marketing materials, MILLENNIUM refers to those materials as the
4 best evidence of their own contents. MILLENNIUM avers that the remainder of
5 Paragraph 46 consists of legal arguments and conclusions to which no response is
6 required. To the extent any response to the remainder of Paragraph 46 is necessary,
7 MILLENNIUM denies the remainder of Paragraph 46. MILLENNIUM
8 specifically denies that any of MILLENNIUM's labels are or have ever been
9 "misbranded and misleading."

10 47. To the extent Paragraph 47 purports to quote excerpts from
11 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
12 refers to those materials as the best evidence of their own contents.
13 MILLENNIUM avers that the remainder of Paragraph 47 consists of legal
14 arguments and conclusions to which no response is required. To the extent any
15 response to the remainder of Paragraph 47 is necessary, MILLENNIUM denies the
16 remainder of Paragraph 47. MILLENNIUM specifically denies that any statements
17 on MILLENNIUM's labels have ever or currently "characteriz[e] the level of
18 antioxidants" in MILLENNIUM products.

19 48. To the extent Paragraph 48 purports to quote excerpts from
20 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
21 refers to those materials as the best evidence of their own contents.
22 MILLENNIUM avers that the remainder of Paragraph 48 consists of legal
23 arguments and conclusions to which no response is required. To the extent any
24 response to the remainder of Paragraph 48 is necessary, MILLENNIUM denies the
25 remainder of Paragraph 48. MILLENNIUM specifically denies that any statements
26 on MILLENNIUM's labels have ever or currently "characteriz[e] the level of
27 antioxidants" in MILLENNIUM products.
28

1 49. To the extent Paragraph 49 purports to quote excerpts from
2 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
3 refers to those materials as the best evidence of their own contents. To the extent
4 any response to the remainder of Paragraph 49 is necessary, MILLENNIUM lacks
5 knowledge or information sufficient to admit or deny the remainder of Paragraph
6 49, and on that basis, denies the remainder of Paragraph 49.

7 50. MILLENNIUM denies each and every allegation of Paragraph 50.

8 51. To the extent Paragraph 51 purports to quote statements and/or
9 materials from state or federal laws and/or regulations, MILLENNIUM refers to
10 those statements and/or materials as the best evidence of their own contents.
11 MILLENNIUM avers that the remainder of Paragraph 51 consists of legal
12 arguments and conclusions to which no response is required. To the extent any
13 response to the remainder of Paragraph 51 is necessary, MILLENNIUM denies the
14 remainder of Paragraph 51.

15 52. To the extent Paragraph 52 purports to quote statements and/or
16 materials from state or federal laws and/or regulations, MILLENNIUM refers to
17 those statements and/or materials as the best evidence of their own contents.
18 MILLENNIUM avers that the remainder of Paragraph 52 consists of legal
19 arguments and conclusions to which no response is required. To the extent any
20 response to the remainder of Paragraph 52 is necessary, MILLENNIUM denies the
21 remainder of Paragraph 52.

22 53. To the extent Paragraph 53 purports to quote statements and/or
23 materials from state or federal laws and/or regulations, MILLENNIUM refers to
24 those statements and/or materials as the best evidence of their own contents.
25 MILLENNIUM avers that the remainder of Paragraph 53 consists of legal
26 arguments and conclusions to which no response is required. To the extent any
27 response to the remainder of Paragraph 53 is necessary, MILLENNIUM denies the
28 remainder of Paragraph 53.

1 54. To the extent Paragraph 54 purports to quote statements and/or
2 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
3 refers to those statements and/or materials as the best evidence of their own
4 contents. MILLENNIUM avers that the remainder of Paragraph 54 consists of
5 legal arguments and conclusions to which no response is required. To the extent
6 any response to the remainder of Paragraph 54 is necessary, MILLENNIUM denies
7 the remainder of Paragraph 54.

8 55. To the extent Paragraph 55 purports to quote statements and/or
9 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
10 refers to those statements and/or materials as the best evidence of their own
11 contents. MILLENNIUM avers that the remainder of Paragraph 55 consists of
12 legal arguments and conclusions to which no response is required. To the extent
13 any response to the remainder of Paragraph 55 is necessary, MILLENNIUM denies
14 the remainder of Paragraph 55.

15 56. To the extent Paragraph 56 purports to quote excerpts from
16 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
17 refers to those materials as the best evidence of their own contents. To the extent
18 Paragraph 56 purports to quote statements and/or materials from the FDA or state
19 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or
20 materials as the best evidence of their own contents. MILLENNIUM avers that the
21 remainder of Paragraph 56 consists of legal arguments and conclusions to which no
22 response is required. To the extent any response to the remainder of Paragraph 56
23 is necessary, MILLENNIUM denies the remainder of Paragraph 56.
24 MILLENNIUM specifically denies that the "marketing of EGCG as the
25 antioxidants in Enlightened Kombucha is misleading and misbrands the products."

26 57. To the extent Paragraph 57 purports to quote excerpts from
27 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
28 refers to those materials as the best evidence of their own contents. To the extent

1 Paragraph 57 purports to quote statements and/or materials from the FDA or state
2 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or
3 materials as the best evidence of their own contents. MILLENNIUM avers that the
4 remainder of Paragraph 57 consists of legal arguments and conclusions to which no
5 response is required. To the extent any response to the remainder of Paragraph 57
6 is necessary, MILLENNIUM denies the remainder of Paragraph 57.

7 MILLENNIUM specifically denies that any statement on MILLENNIUM's labels,
8 past or present, "misbrands the products, and misleads consumers."

9 58. To the extent Paragraph 58 purports to quote excerpts from
10 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
11 refers to those materials as the best evidence of their own contents. To the extent
12 Paragraph 58 purports to quote statements and/or materials from the FDA or state
13 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or
14 materials as the best evidence of their own contents. MILLENNIUM avers that the
15 remainder of Paragraph 58 consists of legal arguments and conclusions to which no
16 response is required. To the extent any response to the remainder of Paragraph 58
17 is necessary, MILLENNIUM denies the remainder of Paragraph 58.

18 59. To the extent Paragraph 59 purports to quote statements and/or
19 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
20 refers to those statements and/or materials as the best evidence of their own
21 contents. MILLENNIUM avers that the remainder of Paragraph 59 consists of
22 legal arguments and conclusions to which no response is required. To the extent
23 any response to the remainder of Paragraph 59 is necessary, MILLENNIUM denies
24 the remainder of Paragraph 59.

25 60. MILLENNIUM avers that Paragraph 60 consists of legal arguments
26 and conclusions to which no response is required. To the extent any response to
27 Paragraph 60 is necessary, MILLENNIUM denies each and every allegation of
28 Paragraph 60. MILLENNIUM specifically denies that "Millennium's marketing

1 campaign for Enlightened Kombucha is centered on the characterization of the level
2 of antioxidants in the products and the use of nutrient content claims using the term
3 ‘antioxidant.’” MILLENNIUM further denies that any MILLENNIUM Product is
4 or has ever been “misbranded in violation of parallel state and federal laws.”

5 61. MILLENNIUM avers that Paragraph 61 consists of legal arguments
6 and conclusions to which no response is required. To the extent any response to
7 Paragraph 61 is necessary, MILLENNIUM denies each and every allegation of
8 Paragraph 61. MILLENNIUM specifically denies that the requisites for class
9 action treatment are present and that this action could properly proceed as a class
10 action.

11 62. To the extent Paragraph 62 purports to quote statements and/or
12 materials from Bossa Nova, MILLENNIUM refers to those statements and/or
13 materials as the best evidence of their own contents. MILLENNIUM denies the
14 remainder of Paragraph 62.

15 63. To the extent Paragraph 63 purports to quote statements and/or
16 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
17 refers to those statements and/or materials as the best evidence of their own
18 contents. MILLENNIUM avers that the remainder of Paragraph 63 is too vague to
19 require a response, mischaracterizes the facts, and consists of legal arguments and
20 conclusions to which no response is required. To the extent any response to the
21 remainder of Paragraph 63 is necessary, MILLENNIUM denies the remainder of
22 Paragraph 63.

23 64. To the extent Paragraph 64 purports to quote statements and/or
24 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
25 refers to those statements and/or materials as the best evidence of their own
26 contents. MILLENNIUM avers that the remainder of Paragraph 64 consists of
27 legal arguments and conclusions to which no response is required. To the extent
28

1 any response to the remainder of Paragraph 64 is necessary, MILLENNIUM denies
2 the remainder of Paragraph 64.

3 65. To the extent Paragraph 65 purports to quote statements and/or
4 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM
5 refers to those statements and/or materials as the best evidence of their own
6 contents. MILLENNIUM avers that the remainder of Paragraph 65 consists of
7 legal arguments and conclusions to which no response is required. To the extent
8 any response to the remainder of Paragraph 65 is necessary, MILLENNIUM denies
9 the remainder of Paragraph 65.

10 66. MILLENNIUM avers that Paragraph 66 consists of legal arguments
11 and conclusions to which no response is required. To the extent any response
12 Paragraph 66 is necessary, MILLENNIUM denies each and every allegation of
13 Paragraph 66.

14 67. To the extent Paragraph 67 purports to quote statements and/or
15 materials from “medical professionals,” MILLENNIUM refers to those statements
16 and/or materials as the best evidence of their own contents. MILLENNIUM avers
17 that the remainder of Paragraph 67 consists of legal arguments and conclusions to
18 which no response is required. To the extent any response to the remainder of
19 Paragraph 67 is necessary, MILLENNIUM denies the remainder of Paragraph 67.

20 68. To the extent Paragraph 68 purports to quote statements and/or
21 materials from the Harvard School of Public Health, MILLENNIUM refers to those
22 statements and/or materials as the best evidence of their own contents.
23 MILLENNIUM avers that the remainder of Paragraph 68 consists of legal
24 arguments and conclusions to which no response is required. To the extent any
25 response to the remainder of Paragraph 68 is necessary, MILLENNIUM denies the
26 remainder of Paragraph 68.

27 69. To the extent Paragraph 69 purports to quote statements and/or
28 materials from scientific and/or medical literature, MILLENNIUM refers to those

1 statements and/or materials as the best evidence of their own contents.

2 MILLENNIUM avers that the remainder of Paragraph 69 consists of legal
3 arguments and conclusions to which no response is required. To the extent any
4 response to the remainder of Paragraph 69 is necessary, MILLENNIUM denies the
5 remainder of Paragraph 69.

6 70. MILLENNIUM denies each and every allegation of Paragraph 70.

7 **CLASS REPRESENTATION ALLEGATIONS**

8 71. MILLENNIUM avers that Paragraph 71 does not allege facts that
9 MILLENNIUM is required to admit or deny. To the extent any response is
10 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
11 deny the allegations of Paragraph 71, and on that basis, denies each and every
12 allegation of Paragraph 71. MILLENNIUM specifically denies that the requisites
13 for class action treatment are present and that this action could properly proceed as
14 a class action.

15 72. MILLENNIUM avers that Paragraph 72 does not allege facts that
16 MILLENNIUM is required to admit or deny. To the extent any response is
17 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
18 deny the allegations of Paragraph 72, and on that basis, denies each and every
19 allegation of Paragraph 72. MILLENNIUM specifically denies that the requisites
20 for class action treatment are present and that this action could properly proceed as
21 a class action.

22 73. MILLENNIUM avers that Paragraph 73 does not allege facts that
23 MILLENNIUM is required to admit or deny. To the extent any response is
24 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
25 deny the allegations of Paragraph 73, and on that basis, denies each and every
26 allegation of Paragraph 73. MILLENNIUM specifically denies that the requisites
27 for class action treatment are present and that this action could properly proceed as
28 a class action.

1 74. MILLENNIUM avers that Paragraph 74 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 74, and on that basis, denies each and every
5 allegation of Paragraph 74. MILLENNIUM specifically denies that the requisites
6 for class action treatment are present and that this action could properly proceed as
7 a class action.

8 75. MILLENNIUM avers that Paragraph 75 does not allege facts that
9 MILLENNIUM is required to admit or deny. To the extent any response is
10 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
11 deny the allegations of Paragraph 75, and on that basis, denies each and every
12 allegation of Paragraph 75. MILLENNIUM specifically denies that the requisites
13 for class action treatment are present and that this action could properly proceed as
14 a class action.

15 76. MILLENNIUM avers that Paragraph 76 does not allege facts that
16 MILLENNIUM is required to admit or deny. To the extent any response is
17 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
18 deny the allegations of Paragraph 76, and on that basis, denies each and every
19 allegation of Paragraph 76. MILLENNIUM specifically denies that the requisites
20 for class action treatment are present and that this action could properly proceed as
21 a class action.

22 77. MILLENNIUM avers that Paragraph 77 does not allege facts that
23 MILLENNIUM is required to admit or deny. To the extent any response is
24 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
25 deny the allegations of Paragraph 77, and on that basis, denies each and every
26 allegation of Paragraph 77. MILLENNIUM specifically denies that the requisites
27 for class action treatment are present and that this action could properly proceed as
28 a class action.

1 78. MILLENNIUM avers that Paragraph 78 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM denies each and every allegation of Paragraph 78.
4 MILLENNIUM specifically denies that the requisites for class action treatment are
5 present and that this action could properly proceed as a class action.

6 79. MILLENNIUM avers that Paragraph 79 does not allege facts that
7 MILLENNIUM is required to admit or deny. To the extent any response is
8 necessary, MILLENNIUM denies each and every allegation of Paragraph 79.
9 MILLENNIUM specifically denies that the requisites for class action treatment are
10 present and that this action could properly proceed as a class action.

11 80. MILLENNIUM avers that Paragraph 80 does not allege facts that
12 MILLENNIUM is required to admit or deny. To the extent any response is
13 necessary, MILLENNIUM denies each and every allegation of Paragraph 80.
14 MILLENNIUM specifically denies that the requisites for class action treatment are
15 present and that this action could properly proceed as a class action.

16 81. MILLENNIUM avers that Paragraph 81 does not allege facts that
17 MILLENNIUM is required to admit or deny. To the extent any response is
18 necessary, MILLENNIUM denies each and every allegation of Paragraph 81.
19 MILLENNIUM specifically denies that the requisites for class action treatment are
20 present and that this action could properly proceed as a class action.

21 82. MILLENNIUM avers that Paragraph 82 does not allege facts that
22 MILLENNIUM is required to admit or deny. To the extent any response is
23 necessary, MILLENNIUM denies each and every allegation of Paragraph 82.
24 MILLENNIUM specifically denies that the requisites for class action treatment are
25 present and that this action could properly proceed as a class action.

26 **COUNT I**

27 83. MILLENNIUM incorporates by reference the responses to Paragraphs
28 1 through 82 set forth in this Answer as though fully set forth herein.

1 84. MILLENNIUM avers that Paragraph 84 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 84, and on that basis, denies each and every
5 allegation of Paragraph 84. MILLENNIUM specifically denies that the requisites
6 for class action treatment are present and that this action could properly proceed as
7 a class action.

8 85. MILLENNIUM avers that Paragraph 85 does not allege facts that
9 MILLENNIUM is required to admit or deny. To the extent any response is
10 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
11 deny the allegations of Paragraph 85, and on that basis, denies each and every
12 allegation of Paragraph 85. MILLENNIUM specifically denies that the requisites
13 for class action treatment are present and that this action could properly proceed as
14 a class action.

15 86. MILLENNIUM avers that Paragraph 86 does not allege facts that
16 MILLENNIUM is required to admit or deny. To the extent any response is
17 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
18 deny the allegations of Paragraph 86, and on that basis, denies each and every
19 allegation of Paragraph 86. MILLENNIUM specifically denies that the requisites
20 for class action treatment are present and that this action could properly proceed as
21 a class action.

22 87. MILLENNIUM avers that Paragraph 87 does not allege facts that
23 MILLENNIUM is required to admit or deny. To the extent any response is
24 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
25 deny the allegations of Paragraph 87, and on that basis, denies each and every
26 allegation of Paragraph 87.

27 88. To the extent Paragraph 88 purports to quote excerpts from
28 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM

1 refers to those materials as the best evidence of their own contents.

2 MILLENNIUM avers that the remainder of Paragraph 88 does not allege facts that
3 MILLENNIUM is required to admit or deny. To the extent any response is
4 necessary, MILLENNIUM denies the remainder of Paragraph 88. MILLENNIUM
5 specifically denies that the requisites for class action treatment are present and that
6 this action could properly proceed as a class action.

7 89. To the extent Paragraph 89 purports to quote excerpts from
8 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
9 refers to those materials as the best evidence of their own contents.
10 MILLENNIUM avers that the remainder of Paragraph 89 does not allege facts that
11 MILLENNIUM is required to admit or deny. To the extent any response is
12 necessary, MILLENNIUM denies the remainder of Paragraph 89.

13 90. MILLENNIUM avers that Paragraph 90 does not allege facts that
14 MILLENNIUM is required to admit or deny. To the extent any response is
15 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
16 deny the allegations of Paragraph 90, and on that basis, denies each and every
17 allegation of Paragraph 90.

18 91. MILLENNIUM avers that Paragraph 91 does not allege facts that
19 MILLENNIUM is required to admit or deny. To the extent any response is
20 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
21 deny the allegations of Paragraph 91, and on that basis, denies each and every
22 allegation of Paragraph 91.

23 92. MILLENNIUM avers that Paragraph 92 does not allege facts that
24 MILLENNIUM is required to admit or deny. To the extent any response is
25 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
26 deny the allegations of Paragraph 92, and on that basis, denies each and every
27 allegation of Paragraph 92.

28

1 93. MILLENNIUM avers that Paragraph 93 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 93, and on that basis, denies each and every
5 allegation of Paragraph 93. MILLENNIUM specifically denies that the requisites
6 for class action treatment are present and that this action could properly proceed as
7 a class action.

8 94. MILLENNIUM avers that Paragraph 94 does not allege facts that
9 MILLENNIUM is required to admit or deny. To the extent any response is
10 necessary, MILLENNIUM denies each and every allegation of Paragraph 94.
11 MILLENNIUM specifically denies that the requisites for class action treatment are
12 present and that this action could properly proceed as a class action.

13 95. MILLENNIUM admits that Exhibit K to the COMPLAINT is a CLRA
14 notice letter that was sent to MILLENNIUM prior to the filing of the
15 COMPLAINT, but denies that this letter “complies in all respects with California
16 Civil Code § 1782.” MILLENNIUM avers that Paragraph 95 does not allege facts
17 that MILLENNIUM is required to admit or deny. To the extent any response is
18 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
19 deny the allegations of Paragraph 95, and on that basis, denies each and every
20 allegation of Paragraph 95. MILLENNIUM specifically denies that the requisites
21 for class action treatment are present and that this action could properly proceed as
22 a class action.

23 96. MILLENNIUM avers that Paragraph 96 does not allege facts that
24 MILLENNIUM is required to admit or deny. To the extent any response is
25 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
26 deny the allegations of Paragraph 96, and on that basis, denies each and every
27 allegation of Paragraph 96. MILLENNIUM specifically denies that Plaintiffs have
28

1 the requisite standing to seek injunctive relief, or that Plaintiffs or the putative class
2 are entitled to any relief whatsoever.

3 **COUNT II**

4 97. MILLENNIUM incorporates by reference the responses to Paragraphs
5 1 through 96 set forth in this Answer as though fully set forth herein.

6 98. MILLENNIUM avers that Paragraph 98 does not allege facts that
7 MILLENNIUM is required to admit or deny. To the extent any response is
8 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
9 deny the allegations of Paragraph 98, and on that basis, denies each and every
10 allegation of Paragraph 98. MILLENNIUM specifically denies that the requisites
11 for class action treatment are present and that this action could properly proceed as
12 a class action.

13 99. MILLENNIUM avers that Paragraph 99 does not allege facts that
14 MILLENNIUM is required to admit or deny. To the extent any response is
15 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
16 deny the allegations of Paragraph 99, and on that basis, denies each and every
17 allegation of Paragraph 99. MILLENNIUM specifically denies that the requisites
18 for class action treatment are present and that this action could properly proceed as
19 a class action.

20 100. MILLENNIUM avers that Paragraph 100 does not allege facts that
21 MILLENNIUM is required to admit or deny. To the extent any response is
22 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
23 deny the allegations of Paragraph 100, and on that basis, denies each and every
24 allegation of Paragraph 100.

25 101. To the extent Paragraph 101 purports to quote excerpts from
26 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
27 refers to those materials as the best evidence of their own contents.
28 MILLENNIUM avers that the remainder of Paragraph 101 does not allege facts that

1 MILLENNIUM is required to admit or deny. To the extent any response is
2 necessary, MILLENNIUM denies the remainder of Paragraph 101.

3 MILLENNIUM specifically denies that the requisites for class action treatment are
4 present and that this action could properly proceed as a class action.

5 102. To the extent Paragraph 102 purports to quote excerpts from
6 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
7 refers to those materials as the best evidence of their own contents.
8 MILLENNIUM avers that the remainder of Paragraph 102 does not allege facts that
9 MILLENNIUM is required to admit or deny. To the extent any response is
10 necessary, MILLENNIUM denies the remainder of Paragraph 102.

11 103. MILLENNIUM avers that Paragraph 103 does not allege facts that
12 MILLENNIUM is required to admit or deny. To the extent any response is
13 necessary, MILLENNIUM denies each and every allegation of Paragraph 103.

14 104. MILLENNIUM avers that Paragraph 104 does not allege facts that
15 MILLENNIUM is required to admit or deny. To the extent any response is
16 necessary, MILLENNIUM denies each and every allegation of Paragraph 104.

17 105. MILLENNIUM avers that Paragraph 105 does not allege facts that
18 MILLENNIUM is required to admit or deny. To the extent any response is
19 necessary, MILLENNIUM denies each and every allegation of Paragraph 105.
20 MILLENNIUM specifically denies that the requisites for class action treatment are
21 present and that this action could properly proceed as a class action.

22 106. MILLENNIUM avers that Paragraph 106 does not allege facts that
23 MILLENNIUM is required to admit or deny. To the extent any response is
24 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
25 deny the allegations of Paragraph 106, and on that basis, denies each and every
26 allegation of Paragraph 106. MILLENNIUM specifically denies that the requisites
27 for class action treatment are present and that this action could properly proceed as
28 a class action.

1 107. MILLENNIUM avers that Paragraph 107 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM denies each and every allegation of Paragraph 107.
4 MILLENNIUM specifically denies that the requisites for class action treatment are
5 present and that this action could properly proceed as a class action.

6 **COUNT III**

7 108. MILLENNIUM incorporates by reference the responses to Paragraphs
8 1 through 107 set forth in this Answer as though fully set forth herein.

9 109. MILLENNIUM avers that Paragraph 109 does not allege facts that
10 MILLENNIUM is required to admit or deny. To the extent any response is
11 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
12 deny the allegations of Paragraph 109, and on that basis, denies each and every
13 allegation of Paragraph 109. MILLENNIUM specifically denies that the requisites
14 for class action treatment are present and that this action could properly proceed as
15 a class action.

16 110. MILLENNIUM avers that Paragraph 110 does not allege facts that
17 MILLENNIUM is required to admit or deny. To the extent any response is
18 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
19 deny the allegations of Paragraph 110, and on that basis, denies each and every
20 allegation of Paragraph 110. MILLENNIUM specifically denies that the requisites
21 for class action treatment are present and that this action could properly proceed as
22 a class action.

23 111. MILLENNIUM avers that Paragraph 111 does not allege facts that
24 MILLENNIUM is required to admit or deny. To the extent any response is
25 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
26 deny the allegations of Paragraph 111, and on that basis, denies each and every
27 allegation of Paragraph 111.
28

1 112. MILLENNIUM avers that Paragraph 112 does not allege facts that
2 MILLENNIUM is required to admit or deny. To the extent any response is
3 necessary, MILLENNIUM denies each and every allegation of Paragraph 112.

4 113. To the extent Paragraph 113 purports to quote excerpts from
5 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
6 refers to those materials as the best evidence of their own contents.
7 MILLENNIUM avers that the remainder of Paragraph 113 does not allege facts that
8 MILLENNIUM is required to admit or deny. To the extent any response is
9 necessary, MILLENNIUM denies the remainder of Paragraph 113.
10 MILLENNIUM specifically denies that the requisites for class action treatment are
11 present and that this action could properly proceed as a class action.

12 114. To the extent Paragraph 114 purports to quote excerpts from
13 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
14 refers to those materials as the best evidence of their own contents.
15 MILLENNIUM avers that the remainder of Paragraph 114 does not allege facts that
16 MILLENNIUM is required to admit or deny. To the extent any response is
17 necessary, MILLENNIUM denies the remainder of Paragraph 114.

18 115. MILLENNIUM avers that Paragraph 115 does not allege facts that
19 MILLENNIUM is required to admit or deny. To the extent any response is
20 necessary, MILLENNIUM denies each and every allegation of Paragraph 115.
21 MILLENNIUM specifically denies that the requisites for class action treatment are
22 present and that this action could properly proceed as a class action.

23 116. MILLENNIUM avers that Paragraph 116 does not allege facts that
24 MILLENNIUM is required to admit or deny. To the extent any response is
25 necessary, MILLENNIUM denies each and every allegation of Paragraph 116.

26 117. MILLENNIUM avers that Paragraph 117 does not allege facts that
27 MILLENNIUM is required to admit or deny. To the extent any response is
28 necessary, MILLENNIUM denies each and every allegation of Paragraph 117.

1 MILLENNIUM specifically denies that the requisites for class action treatment are
2 present and that this action could properly proceed as a class action.

3 **COUNT IV**

4 118. MILLENNIUM incorporates by reference the responses to Paragraphs
5 1 through 117 set forth in this Answer as though fully set forth herein.

6 119. MILLENNIUM avers that Paragraph 119 does not allege facts that
7 MILLENNIUM is required to admit or deny. To the extent any response is
8 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
9 deny the allegations of Paragraph 119, and on that basis, denies each and every
10 allegation of Paragraph 119. MILLENNIUM specifically denies that the requisites
11 for class action treatment are present and that this action could properly proceed as
12 a class action.

13 120. MILLENNIUM avers that Paragraph 120 does not allege facts that
14 MILLENNIUM is required to admit or deny. To the extent any response is
15 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or
16 deny the allegations of Paragraph 120, and on that basis, denies each and every
17 allegation of Paragraph 120.

18 121. To the extent Paragraph 121 purports to quote excerpts from
19 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
20 refers to those materials as the best evidence of their own contents.
21 MILLENNIUM avers that the remainder of Paragraph 121 does not allege facts that
22 MILLENNIUM is required to admit or deny. To the extent any response is
23 necessary, MILLENNIUM denies the remainder of Paragraph 121.

24 122. To the extent Paragraph 122 purports to quote excerpts from
25 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM
26 refers to those materials as the best evidence of their own contents.
27 MILLENNIUM avers that the remainder of Paragraph 122 does not allege facts that
28

1 MILLENNIUM is required to admit or deny. To the extent any response is
2 necessary, MILLENNIUM denies the remainder of Paragraph 122.

3 123. MILLENNIUM avers that Paragraph 123 does not allege facts that
4 MILLENNIUM is required to admit or deny. To the extent any response is
5 necessary, MILLENNIUM denies each and every allegation of Paragraph 123.

6 124. MILLENNIUM avers that Paragraph 124 does not allege facts that
7 MILLENNIUM is required to admit or deny. To the extent any response is
8 necessary, MILLENNIUM denies each and every allegation of Paragraph 124.

9 125. MILLENNIUM avers that Paragraph 125 does not allege facts that
10 MILLENNIUM is required to admit or deny. To the extent any response is
11 necessary, MILLENNIUM denies each and every allegation of Paragraph 125.
12 MILLENNIUM specifically denies that the requisites for class action treatment are
13 present and that this action could properly proceed as a class action.

14 **PRAYER FOR RELIEF**

15 MILLENNIUM avers that Plaintiff's Prayer for Relief does not allege facts
16 that MILLENNIUM is required to admit or deny. To the extent any response is
17 necessary, MILLENNIUM denies each and every allegation contained therein, and
18 any entitlement of Plaintiff or members of the putative class to any relief
19 whatsoever. MILLENNIUM specifically denies that the requisites for class action
20 treatment are present and that this action could properly proceed as a class action.

21 **DEMAND FOR JURY TRIAL**

22 MILLENNIUM does not oppose Plaintiffs' demand for a jury trial in this
23 action as to all issues so triable.

24 **AFFIRMATIVE DEFENSES**

25 While specifically denying any liability to Plaintiffs and members of the
26 purported class, or anyone, and that the requisites for class action treatment are
27 present and that this action could properly proceed as a class action, and without
28 assuming any legal or factual burden not otherwise assigned to it by virtue of listing

1 these affirmative defenses, MILLENNIUM asserts the following affirmative
2 defenses:

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim)**

5 The COMPLAINT fails to state any claim upon which relief may be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Lack of Standing)**

8 The COMPLAINT may be barred, in whole or in part, for lack of standing.

9 **THIRD AFFIRMATIVE DEFENSE**

10 **(Statute of Limitations)**

11 The COMPLAINT may be time-barred, in whole or in part, under applicable
12 statutes of limitations, including but not limited to, California Civil Code § 1783,
13 California Business and Professions Code § 17208, California Code of Civil
14 Procedure §§ 312 through 365, inclusive, and N.Y. Civil Practice Law and Rules §
15 214.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Laches)**

18 The COMPLAINT may be barred, in whole or in part, by the doctrine of
19 laches.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **(First Amendment)**

22 The COMPLAINT may be barred, in whole or in part, by the First
23 Amendment to the United States Constitution.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **(Plaintiff and Third-Party Fault)**

26 The COMPLAINT may be barred, in whole or in part, because the alleged
27 injuries or damages complained of by Plaintiffs and/or members of the purported
28

1 class, if there actually were any, were caused by the acts or omissions of Plaintiffs
2 and/or third parties over whom MILLENNIUM had no control or right of control.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Intervening and Superseding Causes)**

5 The COMPLAINT may be barred, in whole or in part, because the alleged
6 injuries or damage complained of by Plaintiffs and/or members of the purported
7 class, if there actually were any, were caused by the intervening and superseding
8 events and/or actions of persons or entities other than MILLENNIUM.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **(No Causation)**

11 The COMPLAINT may be barred, in whole or in part, barred, because any
12 alleged injury to Plaintiffs was not caused by MILLENNIUM'S conduct.

13 **NINTH AFFIRMATIVE DEFENSE**

14 **(No Damages)**

15 The COMPLAINT may be barred, in whole or in part, barred, because
16 Plaintiffs have not suffered any damages.

17 **TENTH AFFIRMATIVE DEFENSE**

18 **(No Injury)**

19 The COMPLAINT be barred, in whole or in part, barred, because Plaintiffs
20 have not suffered any cognizable injury.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(No Reliance)**

23 The COMPLAINT may be barred, in whole or in part, barred, because
24 Plaintiffs did not justifiably and/or reasonably rely on any false or misleading
25 statement or omission by MILLENNIUM.

TWELFTH AFFIRMATIVE DEFENSE

(Good Faith/Reasonable Belief as to Accuracy and Validity)

The COMPLAINT may be barred, in whole or in part, because at all times at issue herein MILLENNIUM'S conduct was in good faith and/or because any representations or statements alleged to have been made by MILLENNIUM were true and accurate at the time made and/or otherwise were made in good faith and with a reasonable belief as to their validity and accuracy and with a reasonable belief that all of MILLENNIUM'S conduct was lawful.

THIRTEENTH AFFIRMATIVE DEFENSE

(Justification)

The COMPLAINT may be barred, in whole or in part, because MILLENNIUM'S conduct was at all times justified and/or privileged or immunized on the basis of business justification and/or the business judgment rule.

FOURTEENTH AFFIRMATIVE DEFENSE

(Safe Harbor)

The COMPLAINT may be barred, in whole or in part, because MILLENNIUM's business practices were and are not unfair, unlawful, fraudulent, deceptive, and/or likely to mislead because MILLENNIUM's conduct falls within a safe harbor created by law and/or because Plaintiffs' claims are barred by the doctrines of statutory and regulatory compliance.

FIFTEENTH AFFIRMATIVE DEFENSE

(Inadequate Notice)

The COMPLAINT may be barred, in whole or in part, by Plaintiffs' failure to comply with the notice and demand procedures required under California Civil Code § 1750 *et seq.*

SIXTEENTH AFFIRMATIVE DEFENSE

(Corrective Action)

The COMPLAINT may be barred, in whole or in part, because damages may not be awarded to Plaintiffs and members of the purported class pursuant to California Civil Code §§ 1782(b), 1782(c), and 1784.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Preemption)

The COMPLAINT may be barred, in whole or in part, by the doctrine of federal preemption.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction)

The COMPLAINT may be barred, in whole or in part, by the doctrine of primary jurisdiction.

NINETEENTH AFFIRMATIVE DEFENSE

(Abstention)

The COMPLAINT may be barred, in whole or in part, by the doctrine of abstention.

TWENTIETH AFFIRMATIVE DEFENSE

(No Entitlement to Relief Sought)

The COMPLAINT may be barred, in whole or in part, because Plaintiffs seek relief to which they are not entitled.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Speculative Damages)

The COMPLAINT may be barred, in whole or in part, because the damages sought are too speculative and remote.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

The COMPLAINT may be barred, in whole or part, due to Plaintiffs' failure to mitigate damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

Any injury or damage suffered by Plaintiffs or any member of the purported class, if there were any, would be adequately compensated in an action at law for damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Entitlement to Punitive Damages)

Any award of punitive damages to Plaintiffs is barred under the relevant state or federal law and would violate MILLENNIUM'S state or federal constitutional rights.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Basis for Restitution)

There is no basis for restitution as MILLENNIUM has not been unjustly enriched.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Entitlement to Injunctive Relief)

The COMPLAINT may be barred, in whole or in part, because Plaintiffs fail to state a claim for injunctive relief.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim With Particularity)

Plaintiffs have failed to plead the allegations in the COMPLAINT with sufficient particularity, including, but not limited to, the fact that the COMPLAINT fails to state and identify with sufficient particularity the circumstances and

1 communications allegedly constituting misrepresentation and fraud, as required by
2 Rule 9(b) of the Federal Rules of Civil Procedure.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(No Extraterritorial Application of California Law)**

5 The COMPLAINT may be barred, in whole or in part, because the
6 extraterritorial application of Plaintiffs' claims, arising under California law, to
7 wholly interstate or foreign commerce, and/or the application of California laws to
8 the claims of non-residents under the circumstances of this case, would violate the
9 laws of California or otherwise be beyond the scope of jurisdiction of those laws,
10 and/or violate the United States Constitution or otherwise be unconstitutional.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 **(No New York Claim Based on Non-New York Conduct)**

13 The COMPLAINT may be barred, in whole or in part, to the extent it seeks
14 to assert claims under the New York General Business Law based on purchases of
15 MILLENNIUM'S products or other alleged acts, conduct, or statements that were
16 undertaken or made outside of New York.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 **(Consent)**

19 The COMPLAINT may be barred, in whole or in part, to the extent Plaintiffs
20 consented to, approved of, and/or ratified all acts and omissions about which
21 Plaintiffs now complain.

22 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

23 **(Puffery)**

24 The COMPLAINT may be barred, in whole or in part, to the extent it asserts
25 claims arising out of non-actionable puffery.
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THIRTY-SECOND AFFIRMATIVE DEFENSE

(Equitable Defenses)

The COMPLAINT may be barred, in whole or in part, based on principles of equity, including, but not limited to, the doctrines of unclean hands, waiver, and estoppel.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Reservation of Rights)

MILLENNIUM is informed and believes and on such basis alleges that it may have additional defenses available which are not fully known and of which MILLENNIUM is not presently aware. MILLENNIUM reserves the right to raise and assert additional defenses after such defenses have been ascertained.

PRAYER FOR JUDGMENT

WHEREFORE, MILLENNIUM prays for judgment in its favor as follows:

1. That this suit cannot be maintained as a class action;
2. That the COMPLAINT be dismissed in its entirety on the merits;
3. That Plaintiffs take nothing by the COMPLAINT;
4. That MILLENNIUM be awarded its costs, disbursements, and expenses incurred herein;
5. That MILLENNIUM be awarded reasonable attorneys' fees as provided by law; and
6. That MILLENNIUM be awarded such other relief as the Court may deem proper.

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Dated: November 3, 2015

O'MELVENY & MYERS LLP

By: /s/ Scott M. Voelz
Scott M. Voelz
Attorneys for Defendant
Millennium Products, Inc.